

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DEREK A. BEATY,)	
)	
Plaintiff,)	
)	
v.)	No. 1:18-cv-03181-JRS-MPB
)	
M. SARTEN, Officer,)	
T. COBLE, Officer,)	
D. WYATT, Officer,)	
)	
Defendants.)	

**Order Granting Defendants' Motion to Dismiss
and Directing Entry of Final Judgment**

On June 3, 2019, the defendants sought an order compelling the plaintiff Derek A. Beaty to comply with discovery requirements and answer their requests for production served April 23, 2019. Dkt. 41. The defendants wrote to Mr. Beaty on June 11, 2019, asking for the discovery responses which were then overdue. Mr. Beaty did not respond to the defendants' letter, nor did he answer the written discovery. The Court extended deadlines set in the pretrial schedule so that discovery could be completed. Then on August 6, 2019, the Court granted the defendants motion to compel and directed Mr. Beaty to answer all pending discovery requests no later than August 20, 2019.

Mr. Beaty did not furnish answers to pending discovery, nor did he file an objection or motion for protective order, and as of today he still has not done so. The defendants on August 22, 2019, filed their second motion to compel and motion to dismiss this action for failure to obey the Court's order of August 6, 2019, requiring responses to the defendants' request for production. Dkt. 45. The Court issued a Show Cause Order on August 26, 2019, directing Mr. Beaty to show cause no later than September 10, 2019, why this action should not be dismissed with prejudice

for failure to cooperate in discovery. Dkt. 46. Mr. Beaty never responded to the defendants' discovery requests, did not comply with the order to compel, and did not comply with the Court's Show Cause Order.

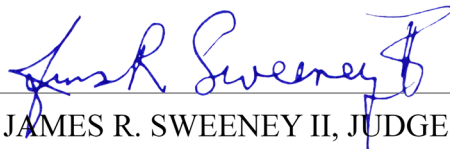
Mr. Beaty was twice warned that the failure to cooperate in discovery or show cause why this action should not be dismissed would result in the dismissal of this action, *with prejudice*, for such failures. Dkts. 44 & 46. Mr. Beaty did not respond to either order and the time for doing so has passed. It appears Mr. Beaty has abandoned this case as he has not responded to any communication or order in over six months. *See* dkt. 26 (last filing made by plaintiff).

Federal Rule of Civil Procedure Rule 37(b)(2)(A)(v) provides that an action may be dismissed for the failure to obey a court order to provide or permit discovery. The Court's Order of August 6, 2019, is an order requiring Mr. Beaty to provide discovery. Dkt. 44. And in dismissing an action where a party fails to obey a discovery order, the Seventh Circuit has said the dismissal is a "feeble sanction" if it is without prejudice. *Lucien v. Breweur*, 9 F.3d 26, 28 (7th Cir. 1993).

Therefore, pursuant to Rules 37(b)(2)(A)(v) and 41(b), the defendants' motion for a sanction of dismissal pursuant to Rule 37(b)(2), dkt. [45], is **granted**. This action is **dismissed with prejudice**. Final judgment consistent with this Order shall now enter.

IT IS SO ORDERED.

Date: 9/18/2019



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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